UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

JAMES MULLIGAN PRINTING COMPANY

and **Cases 14-CA-201194**
14-CA-204833

GRAPHIC COMMUNICATIONS CONFERENCE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 6-505M

Kathy J. Talbott-Schehl, Esq.,
for the General Counsel.
Mr. Kevin Kiske,
for the Respondent.
Mr. Michael Congemi,
for the Charging Party.

DECISION

STATEMENT OF THE CASE

MELISSA M. OLIVERO, Administrative Law Judge. This case was tried in St. Louis, Missouri, on November 7, 2017. The Graphic Communications Conference International Brotherhood of Teamsters, Local 6-505M (Charging Party or Union or Local Union), filed the charge in Case 14-CA-201194 on June 23, 2017, and in Case 14-CA-204833 on August 22, 2017, and the General Counsel issued the consolidated complaint and notice of hearing (complaint) on September 19, 2017.[1] (GC Exh. 1(a), 1(c), 1(e).) The complaint alleges that Respondent violated the National Labor Relations Act (Act) by failing and refusing to provide certain requested information to the Charging Party. Respondent timely answered the complaint on October 3, denying that it violated the Act and asserting four affirmative defenses. (GC Exh. 1(g).)

At the outset of the hearing, Respondent appeared *pro se* by its vice president, Kevin Kiske. Kiske admitted that Respondent did not comply with the General Counsel's subpoena duces tecum. (GC Exh. 31; Tr. 8.) Kiske read an opening statement and presented several documents as exhibits. (Tr. 12-15.) Kiske then rose from his seat and headed for the door of the hearing room. At that time, I asked Kiske to stay and advised him that if he did not stay, I would allow counsel for the General Counsel to present her case and that I would make a finding. (Tr. 15.) Kiske left the hearing room and did not return. (Tr. 15.) I rejected Respondent's exhibits as

[1] All dates are in 2017 unless otherwise indicated.

hearsay and because a proper foundation was not laid for their admission.[2] (R. Exh. 1 (rejected); Tr. 15.) Following the hearing I sent a letter to Kiske (copying the General Counsel), inviting Respondent to file a brief in this matter by December 12 and urging Kiske to consult with an attorney or representative.[3] (ALJ Exh. 1.) Respondent did not file a brief and did not contact the Division of Judges about the letter.

As in all cases, the parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. On the entire record, including my own observation of the demeanor of the witnesses,[4] and after considering the brief filed by the General Counsel, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a Missouri corporation, is engaged in the non-retail sale and production of printed materials at its facility in St. Louis, Missouri, where purchases and receives goods valued in excess of $50,000 directly from points outside the State of Missouri. Respondent has admitted, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. (GC Exh. 1(g).)

II. ALLEGED UNFAIR LABOR PRACTICES

A. Respondent's Business and Labor Relations

Respondent is owned by Jerry Kiske. (Tr. 18.) Jerry Kiske's son, Kevin Kiske, serves as its vice president. (Id.) Sean Honse is a production manager for Respondent. (Tr. 19.) Michael Congemi has served as the president of the Graphic Communications Conference of the International Brotherhood of Teamsters, Local 6-505M since January 2015. (Tr. 17.) In this

[2] In reviewing Respondent's rejected documents, I found a written version of the opening statement made by Kiske at the hearing, a notarized affidavit of one of Respondent's employees, a printout from the Board's public website regarding other cases involving Respondent and the Union (14-CA-184625 and 14-CA-189574), an brief statement signed by a Union member, copies of e-mails and letters already in evidence as GC Exhs. 6, 8, and 17, a letter from Kevin Kiske to the General Counsel and e-mails exchanged between Kiske and the General Counsel, regarding Respondent's refusal to provide affidavit testimony and reasons for refusing to settle these cases, and a copy of the General Counsel's subpoena duces tecum (GC Exh. 31). I reaffirm my ruling made at trial that the documents contained in Respondent's proffered exhibits are inadmissible hearsay and for which a proper foundation was not laid, except for those documents admitted into evidence during the hearing though the General Counsel's witnesses.

[3] I have added the letter I sent to Kiske and the General Counsel on November 21, 2017, into the record as ALJ Exhibit 1.

[4] Although I have included citations to the record to highlight particular testimony or exhibits, my findings and conclusions are not based solely on those specific record citations, but rather on my review and consideration of the entire record for this case. My findings of fact encompass the credible testimony and evidence presented at trial, as well as logical inferences drawn therefrom.

capacity, Congemi negotiates contracts and communicates with employers about contracts. (Tr. 17.) Laura Macon serves as an administrative assistant and bookkeeper for the Union and is supervised by Congemi. (Tr. 24, 40.) Macon communicates with employers about issues including the payment of dues, receives dues from employers, and transmits dues to the International Union. (Tr. 25, 40-41.)

Respondent has admitted, and I find, that Kevin Kiske is a supervisor and agent of Respondent within the meaning of Sections 2(11) and 2(13) of the Act and that the Union is a labor organization with the meaning of Section 2(5) of the Act.[5] (GC Exh. 1(g).) Furthermore, Respondent has admitted, and I find, that the Union is the exclusive collective-bargaining representative of the following appropriate unit of employees (unit), as defined in Section 9(b) of the Act:

> All employees whose job classification and scale of wages are set forth in the collective bargaining agreement . . . including all production work for lithographic film processes and offset press printing as well as complex equipment in the Bindery Department. All other employees are excluded: sales, professional, office and clerical, non-working supervisors and plant superintendents.

(G. C. Exh. 1(g)). Employees in the unit operate printing presses and bindery equipment and perform pre-press work. (Tr. 18.)

The Union has represented this unit of Respondent's employees for more than 50 years. (Tr. 18.) Historically, the unit consisted of 20 to 25 employees, but more recently has consisted of only 10 employees. (Tr. 18.) Respondent and the Union have been signatory to a series of collective-bargaining agreements, the most recent of which were effective from July 1, 2010, through June 30, 2015 (2010 contract or agreement), and from July 1, 2015, through December 31, 2017 (2015 contract or agreement). (GC Exhs. 2 and 3.)

The most recent of these agreements provides:

> [Respondent] agrees upon request to provide a list of employees covered under the CBA on a one time annual basis with the name, date of hire, base wage rate, and classification.

(GC Exh. 2, Sec. 8.6.) A different version of this language was also present in the 2010 contract, but was not present in the preceding contract, effective from July 1, 2005, through July 1, 2008 (2005 contract or agreement).[6] (GC Exhs. 3 and 5.) In negotiations for the 2010 contract, the Union proposed the language of Section 8.6 because it had become increasingly difficult to obtain an employee list from Respondent, as the Union had no shop steward at the St. Louis facility.[7] (GC Exhs. 4, 29; Tr. 61-62.) Respondent agreed to provide this list of employees. (GC

[5] Although Honse is not alleged to be a supervisor or agent of Respondent in the complaint, Congemi's testimony that he is a production manager of Respondent stands uncontroverted. (Tr. 19.)

[6] Congemi negotiated the 2015 contract on behalf of the Union, but did not negotiate the prior agreements. (Tr. 21, 24.) Chico Humes, the Union's president from 2006-2015, negotiated the 2008 contract. (Tr. 60-62.)

[7] The prior version of Section 8.6 required the shop steward to prepare a seniority list of employees,

Exh. 30; Tr. 62.) Respondent and the Union did not agree that the only information Respondent had to provide to the Union was the information outlined in Section 8.6. (Tr. 63.) Section 8.6 was not discussed during negotiations for the 2015 contract. (Tr. 35.)

B. Information Requests

In the fall of 2016, Macon went to Congemi and informed him that one of Respondent's employees, Scott Danback, had not appeared on a dues remittance list for some time. (Tr. 25-26, 41.) Macon asked Kevin Kiske if Danback was still employed and, if he was not, when Danback had left Respondent's employ. (Tr. 25, 42.) Macon also sent e-mails to Respondent, including on January 24, February 8, March 9, and May 3, requesting the employment status of Scott Danback.[8] (GC Exhs. 13, 14, 15, and 16.) Kiske did not respond to these e-mails. (Tr. 42-44.)

After Macon was unsuccessful in her attempts to find out the status of Danback's employment with Respondent, Congemi sent an e-mail to Kevin Kiske. (GC Exh. 6.) In Congemi's e-mail, dated March 13, he asked if Danback was still employed by Respondent and, if not, when his employment terminated. On March 16, Kiske responded to Congemi. (GC Exh. 6.) Kiske, apparently citing Section 8.6 of the 2015 contract, stated, "Good morning, Mike. Here is a list of current employees with their base wage rate, start date, and classification." (GC Exh. 7; Tr. 27-28.) Danback's name did not appear on the list. (GC Exh. 7; Tr. 28.) On March 16, Congemi replied to Kiske, asking whether Danback was still employed and, if not, when his employment terminated. (GC Exh. 6.) After receiving no response from Kiske, Congemi sent a follow-up e-mail on March 29, again asking for Danback's termination date. (GC Exh. 6.) Kiske did not respond to Congemi's March 29 e-mail. (Tr. 28.)

Macon called Danback to find out if he was still working for Respondent. (Tr. 45.) Danback indicated that he was not, but could not remember the date when he stopped working. (Tr. 45.)

Congemi testified that it is important for the Union to know if an employee has ceased working for an employer so that the Union can assist the employee in finding another job. (Tr. 29.) Moreover, the Local Union must pay a "per capita tax" to the International Union for each dues-paying employee of an employer. (Tr. 29-30.) Once an employee ceases working and remitting dues, the Local Union is no longer required to pay the per capita tax to the International Union. (Tr. 30.) Thus, the Local Union needs to know if a member has resigned or left its membership, so that it does not continue needlessly paying a fee to International Union. (Tr. 30.) As of the date of the hearing, the Local Union was still being charged the per capita tax for Danback, as the Local Union did not know the date he stopped working for Respondent. (Tr. 45.)

In May, the Union learned from 2 members that Respondent had been laying off employees. (Tr. 30.) The members advised the Union that Respondent had not been "sharing time," or distributing the loss of work time, as equally as possible. (Tr. 30.) On June 6, Congemi sent a

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including their job classifications, and to provide the list to the Union. (GC Exh. 5, Sec. 8.6.)

[8] Respondent admitted in its answer that the Union made these requests. (GC Exh. 1(g).)

letter to Honse regarding the layoffs.[9] (GC Exh. 8; Tr. 31.) In his letter, Congemi requested that Respondent provide a list of layoff days per union employee in the press and bindery departments since January 1. (GC Exh. 8.) Congemi requested that Respondent provide the information by June 15. (Id.) Respondent never responded to Congemi's request. (Tr. 31-32.) The failure of Respondent to provide the information regarding the layoffs prevented the Union from filing a grievance. (Tr. 32.)

On June 11, Congemi sent an e-mail to Kevin Kiske about a union member being forced to share time (forced layoff days) with a non-union temporary worker. (GC Exh. 10.) Section 12.2 of the 2015 contract states:

> Temporary workers may assist as needed per the shop past practice . . . At no time may a temporary worker replace a regular full time employee of that department of the employer who is available for work.

(GC Exh. 2, Sec. 12.2.) Congemi's June 11 reminded Kiske of this provision. (GC Exh. 10.) A week later Kiske responded to Congemi, stating that the employee was sharing time with another regular employee, not a temporary worker. (GC Exh. 10.) However, Respondent did not provide the list of layoff days per union employee, as requested by Congemi on June 6. (GC Exh. 8.)

Congemi sought information regarding the layoffs so that he could determine whether layoff time was being shared equally among union members employed by Respondent. (Tr. 32.) The Union also required the information to determine whether it could file a grievance over the layoffs. (Tr. 32.) The information was never provided.

Congemi later became aware through union members that Corey Hill might no longer be working for Respondent. (Tr. 33.) Congemi shared this information with Macon. (Tr. 46.) Macon sent an e-mail to Respondent on August 8, seeking the date when Corey Hill last worked.[10] (GC Exh. 17; Tr. 46.) Kevin Kiske responded to Macon on August 10, stating, "Comply [sic] with the current CBA as the company does (Section 8.6). This matter is closed." (GC Exh. 17.) Macon eventually spoke with Corey Hill by telephone and learned the date when he stopped working for Respondent. (Tr. 47.) Respondent, however, never provided this information. (Tr. 47.)

C. Section 8.6 of the Parties' Collective-Bargaining Agreement

The Union does not agree with Respondent's interpretation of Section 8.6 of the collective-bargaining agreement. (Tr. 35.) As mentioned above, this section provides:

> [Respondent] agrees upon request to provide a list of employees covered under the CBA on a one time annual basis with the name, date of hire, base wage rate, and classification.

[9] Respondent admitted in its answer that the Union made this request. (GC Exh. 1(g).)
[10] Respondent admitted in its answer that the Union made this request. (GC Exh. 1(g).)

(GC Exh. 2, Sec. 8.6.) When the Union has asked for such a list, Respondent has generally provided it. (GC Exhs. 22, 23, 24, 25; Tr. 35, 53-54.) More recently, the Union asked for such a list in November 2016. (GC Exh. 26; Tr. 54-55.) Respondent did not provide the list, instead stating that nothing had changed from a list it provided 4 months earlier. (GC Exh. 27; Tr. 55.) Respondent has recently taken the position that Section 8.6 limits the information it must provide to the Union to what is listed in this section of the contract. (See GC Exh. 17; Tr. 14.)

In the past, during the time period when Section 8.6 of the collective-bargaining agreement has been in effect, the Union has requested other information from Respondent. (GC Exhs. 9, 10, 11, 20, 21, 28; Tr. 35-39, 48, 50-51.) The information sought included employee insurance coverage, alleged sharing of time between unit and non-unit employees, Respondent's employee handbook, a shortage in Respondent's dues remittance check, an employee's start date and hourly wage, and an incorrect invoice for employee dues due to a layoff. In each instance, Respondent provided the requested information to the Union without objection. (Tr. 35-39; 45, 48, 51, 51-52.) In another, similar instance, Respondent provided the termination date of an employee without objection. (GC Exh. 19; Tr. 50.) However, in another instance, Kiske did not comply with a Union request for the termination date of another employee, Brett Jones. (GC Exh. 18; Tr. 49.)

DISCUSSION AND ANALYSIS

A. Witness Credibility, Adverse Inference, and the Conduct of the Hearing in the Absence of Respondent's Representative

A credibility determination may rely on a variety of factors, including the context of the witness' testimony, the witness' demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities and reasonable inferences that may be drawn from the record as a whole. *Double D Construction Group,* 339 NLRB 303, 305 (2003); *Daikichi Sushi,* 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group,* 321 NLRB 586, 589 (1996)), enfd. 56 Fed. Appx. 516 (D.C. Cir. 2003). Credibility of the witnesses is not really at issue in this case, as their testimony was both believable and corroborated by the evidence.

I found the brief testimony of Congemi, Macon, and Humes to be credible. Congemi testified in a steady and methodical manner. Macon evinced an enthusiastic and forthcoming demeanor. Humes gave his testimony in a concise and steady fashion. None of the witnesses appeared nervous or evasive. The testimony of all three witnesses was corroborated by the documentary evidence presented by the General Counsel. As the witnesses were not subject to cross-examination and Respondent chose not to participate in the hearing, all of their testimony stands unchallenged. As such, I credit the testimony of Congemi, Macon, and Humes.

At the hearing, Kiske admitted that Respondent did not produce the documents sought by the General Counsel's subpoena duces tecum. (Tr. 7-8.) The General Counsel moved that I make an adverse inference that had Respondent complied with its subpoena, it would have produced records unfavorable to its position. (Tr. 67.) I granted the motion. (Tr. 67.) A party has an obligation to begin a good-faith effort to gather responsive documents upon service of a subpoena and a party who fails to do so, does so at its peril. *McAllister Towing & Transportation,* 341 NLRB 394 (2004), enfd. 156 Fed. Appx. 386 (2d Cir. 2005); *Metro West*

Ambulance Service, 360 NLRB 1029, 1030 (2014). Imposing such a sanction lies within the discretion of the trial judge. *McAllister Towing & Transportation,* 341 NLRB at 394. Respondent in this case gave no reason for its failure to comply with the General Counsel's subpoena and did not file a petition to revoke. Therefore, I reaffirm my ruling and draw an adverse inference that had Respondent complied with the General Counsel's subpoena, it would have produced documents adverse to its position.[11]

Additionally, conducting this hearing in the absence of Respondent's representative was appropriate. I advised Kevin Kiske at the outset of the hearing that his failure to participate would result in a finding made upon the evidence presented by the General Counsel. The Board has approved the actions of an administrative law judge in allowing the General Counsel to present evidence and testimony in the absence of a representative of a respondent when adequate notice of a hearing has been given. *Beta Steel Corp.,* 326 NLRB 1267, 1267 fn. 3, 1268 (1998). Respondent obviously received adequate notice of the time and place of the hearing, as demonstrated by Kiske's appearance. In light of Respondent's decision, as stated by Kiske, not to participate in the hearing after receiving adequate notice, presentation of evidence and testimony by the General Counsel was proper.

B. Respondent Violated the Act by Refusing to Provide Requested Information to the Union

In dealing with a certified or recognized collective-bargaining representative, one of the things which employers must do, on request, is to provide information that is needed by a bargaining representative for the proper performance of its duties. *NLRB v. Acme Industrial Co*., 385 U.S. 432 (1967). Following an appropriate request, and limited only by considerations of relevancy, the obligation arises from the operation of the Act itself. *Ellsworth Sheet Metal*, 224 NLRB 1506 (1976). Where the requested information concerns bargaining unit employees' names, addresses, wage rates, job classifications, or other related information, the information is presumptively relevant and the employer has the burden of proving lack of relevance. *Trustees of the Masonic Hall*, 261 NLRB 436, 437 (1982); *Safelite Glass*, 283 NLRB 929, 948 (1987); *Proctor & Gamble Mfg. Co. v. NLRB*, 603 F.2d 1310, 1315, 1316 (8th Cir. 1979). A request for information may be made orally or in writing and does not need to be repeated. *Bundy Corp.,* 292 NLRB 671, 672 (1989).

The information sought by the Union in its requests was presumptively relevant. Information concerning the discharge or termination of a bargaining unit employee is presumptively relevant. *Ryder Distribution Resources, Inc.,* 302 NLRB 76, 91 (1991). Thus, I find that the information requested by the Union regarding the termination date for Danback's and Hill's employment presumptively relevant. Information concerning employee layoffs is also presumptively relevant. *United Electrical Contractors Assn.,* 347 NLRB 1, 15 (2006), citing *Maple View Manor,* 320 NLRB 1149, 1150-1151(1996); see also *Yeshiva University,* 315 NLRB 1245, 1248 (1994) (Information sought by a union relating to the union's investigation of a potential grievance, or to the policing and/or proper application of the terms of a collective-bargaining

[11] Even in the absence of this adverse inference, I would find that Respondent violated the Act as set forth more fully below. The General Counsel presented strong evidence regarding the violations alleged in the complaint. Nevertheless, the drawing of an adverse inference is appropriate in these circumstances and provides additional support for the findings set forth herein.

agreement, relates to employees in the bargaining unit and is presumptively relevant). Therefore, I further find that the Union's request for information concerning the layoffs of bargaining unit employees and the termination dates of unit employees was presumptively relevant and that the Union did not have to provide a showing of particularized relevance for the information.

Even if I were to find that the requested information was not presumptively relevant, I would find that the Union has established its relevance. When a union seeks information concerning information regarding, for example, employees outside of the bargaining unit, there is no presumption of relevance and the union has the burden to show relevance in such circumstances. *E.I. DuPont de Nemours and Co.,* 744 F.2d 536, 538 (6th Cir. 1984). *Keauhou Beach Hotel,* 298 NLRB 702, 702 (1990). The legal standard concerning just what information must be produced is whether or not there is "a probability that such data is relevant and will be of use to the union in fulfilling its statutory duties and responsibilities as the employees' exclusive bargaining representative." *Bohemia, Inc*., 272 NLRB 1128 (1984). The Board uses a broad, discovery-type standard in determining relevance in information requests and potential or probable relevance is sufficient to give rise to an employer's obligation to provide information. *Shoppers Food Warehouse*, 315 NLRB 258, 259 (1994). It is well-settled that an employer may not simply refuse to comply with an ambiguous or overly broad information request, but must instead request clarification or comply with the request to the extent it encompasses necessary and relevant information. *Keauhou Beach Hotel,* 298 NLRB at 702. The information requested here was narrowly tailored to assist the Union in its capacity as exclusive collective-bargaining representative of Respondent's employees. The Union requested only the employment status of Danback, the last day of employment for Danback and Hill, and a list of employees laid off in 2017 and the dates of the layoffs. It cannot be argued that the Union's requests in this case were unreasonable or overly broad.

I find that the information sought by the Union is both relevant and necessary to the performance of its duties as the exclusive collective-bargaining representative of its members. The Board has found an employer's failure to provide the dates of hire and/or termination to a Union violated the Act, as the information was both relevant and necessary to the Union's performance of its statutory duties as collective-bargaining representative. *Holmes Detective Bureau,* 256 NLRB 824, 826 (1981). In this case, the Union stated that it required the termination dates for Danback and Hill so that it could stop paying dues to the International Union for them. Assuming these employees were no longer employed, and therefore not paying union dues through Respondent, the Union was still being required to pay the per capita tax for them to the International Union. This money had to come from somewhere and it would most likely come from the dues of other members. The Union had a duty, on behalf of its other members, to stop paying needlessly for Danback and Hill. Therefore, I find that the Union established the relevance and necessity of the information it sought from Respondent regarding Danback and Hill.

Furthermore, as the exclusive bargaining representative for the unit, the Union had a statutory duty to investigate its members' claims that they were being laid off inequitably. The collective-bargaining agreements between the parties all contain language regarding layoffs. This situation could give rise to a grievance against Respondent by the Union. The failure of Respondent to provide the information regarding the layoffs prevented the Union from filing a grievance. Thus, I find that the information sought by the Union regarding unit employee layoffs

was necessary to ascertain the nature, scope, and extent of a possible contract violation or grievance and necessary to the Union's function as collective-bargaining agent.

After the Union demonstrated the relevancy of the requested information, the burden shifted to Respondent to establish that the information was not relevant, did not exist, or for some other valid and acceptable reason, could be furnished to the requesting party. *Samaritan Medical Center,* 319 NLRB 392, 398 (1995), citing *Somerville Mills,* 308 NLRB 425 (1992) and *Postal Service,* 276 NLRB 1282 (1985). Respondent elected not to participate in the hearing. Therefore, Respondent has failed to meet its burden.

There is nothing in the testimony or evidence that establishes that the Union clearly and unmistakably waived its right to seek the information at issue in this case. The right to relevant information is a statutory right, and waiver of such right may not be found unless the waiver is expressed in clear and unmistakable language. *Tritac Corp.,* 286 NLRB 522, 529 (1987), citing *Proctor & Gamble Mfg. Co. v. NLRB,* 603 F.2d 1310, 1317-1318 (9th Cir. 1979), enfg. 237 NLRB 747 (1978). The parties' collective bargaining agreements do not contain language indicating that the Union waived its right to request other information when it agreed to Section 8.6. Indeed, the Union has sought other information from Respondent and Respondent has provided it without objection. Moreover, the uncontradicted testimony at the hearing established that the Union did not intend such a waiver. As such, I cannot find that the Union waived its statutory right to the information it sought based on the language of Section 8.6 of the contract.

That the Union might have been able to obtain the requested information from another source is of no moment. The fact that a union may obtain information by other means or from another source does not alter or diminish the obligation of an employer to furnish relevant information. *Holyoke Water Power Co.,* 273 NLRB 1369, 1373 (1985). The Union reached out to Danback, but he could not recall his last date of employment with Respondent. The Union's ability to potentially obtain the information it sought from another source did not diminish Respondent's obligation to timely provide it. As such, I find that Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to provide requested information to the Union regarding the employment of Danback an Hill and the layoff of unit employees.

C. Respondent's Arguments and Affirmative Defenses

In its answer to the complaint, Respondent asserted four affirmative defenses, including failure to state a claim, that the claims in the complaint are time-barred under Section 10(b) of the Act, that the claims in the complaint exceed the scope for the underlying charge, and a failure by the Charging Party to exhaust administrative remedies. The proponent of an affirmative defense has the burden of establishing it. *Babcock & Wilcox Construction Co*., 361 NLRB No. 132, slip op at 14 (2014), citing *Broadway Volkswagen*, 342 NLRB 1244, 1246 (2004) (finding the burden on the party raising an untimely charge defense under Section 10(b) of the Act), enfd. 483 F.3d 628 (9th Cir. 2007). A review of the exhibits reveals that all of the information requests were made by the Union within 6 months of the filing of the charges in this case and that the allegations contained in the charges are refusals by Respondent to provide requested information. As found above, the complaint states proven violations of the Act. As Respondent presented no evidence supporting its affirmative defenses at the hearing, and Respondent did not file a brief, I will not address them further.

CONCLUSIONS OF LAW

1. Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Graphic Communications Conference International Brotherhood of Teamsters, Local 6-505M (Union), is a labor organization within the meaning of Section 2(7) of the Act.

3. The Union is the exclusive collective-bargaining representative of the following appropriate unit of employees (unit), as defined in Section 9(b) of the Act:

> All employees whose job classification and scale of wages are set forth in the collective bargaining agreement . . . including all production work for lithographic film processes and offset press printing as well as complex equipment in the Bindery Department. All other employees are excluded: sales, professional, office and clerical, non-working supervisors and plant superintendents.

4. Respondent violated Section 8(5) and (1) of the Act when it failed to provide the Union with information concerning the employment status of unit employee Scott Danback and the date his employment ended, as requested by the Union on January 24, February 8, March 9, March 17, and March 29, 2017.

5. Respondent violated Section 8(5) and (1) of the Act when it failed to provide the Union with a listing of layoff days per unit employees in the Press Department and Bindery Department, as requested by the Union on June 6, 2017.

6. Respondent violated Section 8(5) and (1) of the Act when it failed to provide the Union with the date unit employee Corey Hill last worked for Respondent, as requested by the Union on August 8, 2017.

7. By engaging in the unlawful conduct set forth in paragraphs 4, 5, and 6, above, Respondent has engaged in an unfair labor practice affecting commerce within the meaning of Section 8(a)(5) and (1), and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Respondent is hereby ordered bargain in good faith with the Union as the exclusive collective-bargaining representative of the following appropriate unit of employees (unit):

> All employees whose job classification and scale of wages are set forth in the collective bargaining agreement . . . including all production work for lithographic film processes and offset press printing as well as complex equipment in the Bindery Department. All other employees are excluded: sales, professional, office and clerical, non-working supervisors and plant superintendents

by providing the Union with the information it requested on January 24, February 8, March 9, March 17, March 29, June 6, and August 8, 2017, as set forth in the complaint: (1) the employment status of unit employee Scott Danback and the date his employment ended; (2) a listing of layoff days per unit employee in the press department and bindery department since January 1, 2017; and (3) the date unit employee Corey Hill last worked for Respondent.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[12]

ORDER

Respondent, James Mulligan Printing Company, St. Louis, Missouri, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain in good faith with the Union, Graphic Communications Conference International Brotherhood of Teamsters, Local 6-505M, by failing and refusing to furnish it with requested information that is relevant and necessary to the performance of its function as the exclusive collective-bargaining representative of Respondent's employees in the following appropriate unit:

> All employees whose job classification and scale of wages are set forth in the collective bargaining agreement . . . including all production work for lithographic film processes and offset press printing as well as complex equipment in the Bindery Department. All other employees are excluded: sales, professional, office and clerical, non-working supervisors and plant superintendents.

(b) In any like or related manner interfering with, restraining, or coercing employees of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish the Union with the following information it requested in its correspondence dated January 24, February 8, March 9, March 17, March 29, June 6, and August 8, 2017: (1) the employment status of unit employee Scott Danback and the date his

[12] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

employment ended; (2) a listing of layoff days per unit employee in the press department and bindery department since January 1, 2017; and (3) the date unit employee Corey Hill last worked for Respondent.

(b) Within 14 days after service by the Region, post at its facility in St. Louis, Missouri, a copy of the attached notice marked "Appendix."[13] Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 24, 2017.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 14 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. December 15, 2017

Melissa M. Olivero
Administrative Law Judge

[13] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Graphic Communications Conference International Brotherhood of Teamsters, Local 6-505M (Union), by failing and refusing to furnish it with requested information that is relevant and necessary to the performance of its function as the exclusive collective-bargaining representative of Respondent's employees in the following appropriate unit:

> All employees whose job classification and scale of wages are set forth in the collective bargaining agreement . . . including all production work for lithographic film processes and offset press printing as well as complex equipment in the Bindery Department. All other employees are excluded: sales, professional, office and clerical, non-working supervisors and plant superintendents.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL furnish the Union with the information it requested on January 24, February 8, March 9, March 17, March 29, June 6, and August 8, 2017.

JAMES MULLIGAN PRINTING COMPANY
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

1222 Spruce Street, Room 8.302, Saint Louis, MO 63103-2829
(314) 539-7770, Hours: 8 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/14-CA-201194 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (314) 449-7493.